

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
Avolve Software Corporation
For
Maintenance and Support for ProjectDox
Contract Number: MA 5600 PS19000002**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Avolve Software Corporation ("Contractor"), having offices at 4835 East Cactus Road, Suite 420, Scottsdale, Arizona 85254.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for providing the commodities identified in Section 2. In the event that the need arises for the Contractor to provide deliverables beyond those stated in the Section 2, the Contractor and the City shall negotiate mutually agreeable terms and compensation for such.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in delivering the commodities. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress.

SECTION 2. SCOPE OF WORK

2.1 **Contractor's Obligations.** The Contractor shall provide the Avolve SAAS Solution and related Professional Services (as each term is defined in the Avolve Software Corporation Software as a Service Agreement (the "SAAS Terms" or "Supplemental Purchase Terms and Conditions") attached hereto at Exhibit B to this Contract, and incorporated herein by reference) described in the SAAS Terms in accordance in all material respects with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations. City acknowledges that Contractor's ability to perform in accordance with the prior sentence is dependent upon the City's providing Contractor with all reasonably requested information, access and assistance.

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid as set forth in the Pricing Agreement, attached hereto as Exhibit A to this Contract, and incorporated herein by reference, upon completion of the applicable payment milestone.

3.2 **Invoices.**

3.2.1 The Contractor shall submit separate invoices in duplicate on each purchase order or delivery order after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

3.2.2 **Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required

information cannot be processed and will be returned to the Contractor. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. Invoices shall be mailed to the below address:

	City of Austin
Department	Communications and Technology Management
Attn:	Accounts Payable
Address	PO Box 1088
City, State, Zip Code	Austin, Texas 78767

3.2.3 Unless the parties mutually agreed otherwise, invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Unless the parties mutually agree otherwise, invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the approved work site(s) (which may include both work on-site at City locations and off-site at the Customer's locations).

3.2.4 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized travel expenses at actual cost without markup.

3.2.5 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.3 **Payment.**

3.3.1 All properly invoiced amounts received by the City will be paid within thirty (30) calendar days of the City's receipt of invoice. If the City disputes any invoiced amount, it shall do so in writing on or before the due date of the invoice, in accordance with Section 3.3.3. below. The City shall include in its written notice of dispute a reasonably detailed description of the basis of the dispute. The parties shall then meet as soon as possible, but in all cases within five business days, and use their best efforts to promptly resolve the dispute. If it is determined any amount is owed Contractor, City shall as soon as possible pay the disputed amount in full to Contractor upon resolution of the dispute, but in all cases within 14 calendar days. Subject to Section 7.4 of this contract if an audit discovers overpayment the City will be able to recover the overpayment.

3.3.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

3.3.3 The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

- 3.3.3.1 delivery of defective or non-conforming deliverables by the Contractor;
- 3.3.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
- 3.3.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
- 3.3.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.3.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

3.3.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.3.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.3.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.4 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.5 **Reimbursable Expenses.** Expenses incurred directly in support of completing the work set forth in this Contract are reimbursable to the Contractor within the Contract amount.

3.5.1 **Administrative.** The Contractor will be reimbursed for selected administrative expenses incurred directly in support of executing this Contract. Reimbursable administrative expenses include actual charges for long distance telephone calls, facsimile transmissions, reproduction, printing and binding, postage, express delivery and report processing.

3.5.2 **Travel Expenses.** All travel, lodging, and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Contract will be reviewed against the City's Travel Policy and the current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulation.

3.6 **Final Payment and Close-Out.**

3.6.1 If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the project manager or contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.

3.6.2 The making and acceptance of final payment will constitute:

3.6.2.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations

under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.6.2.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled, arising from City's failure to comply with the Contractor or the terms of any warranty specified there, arising from the City's continuing obligations under the Contract, including but not limited to warranty, intellectual property license limitations, and confidentiality obligations, or arising under the Contractor's right to audit.

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of thirty-six months. The Contract may be extended beyond the initial term for up to two additional twelve month periods at the City's sole option. The exercising of the City's two options for additional consecutive 12 month renewal terms shall be in accordance with Section C(3) (Term) of the SAAS Terms.

4.2 **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **This section is intentionally omitted.**

4.4 **Termination For Cause.** Termination rights are as set forth in Section C(4) (Termination) of the SAAS Terms.

4.5 **Termination Without Cause.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 **Fraud.** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 **Insurance:** The following insurance requirements apply.

5.1.1 General Requirements.

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Contract execution and within fourteen (14) calendar days after written request from the City.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin Purchasing Office
P. O. Box 1088
Austin, Texas 78767

OR

PURInsuranceCompliance@austintexas.gov

5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

5.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

5.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.14 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

5.1.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2 Contractor/Subcontracted Work.

5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

5.1.2.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

5.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.1.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

5.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

5.1.2.3.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC420601, or equivalent coverage.

5.1.2.4 **Professional Liability Insurance.**

5.1.2.4.1 The Contractor shall provide coverage, at a minimum limit of \$1,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Agreement.

5.1.2.4.2 If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the contract.

5.1.2.5 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

5.2 **Equal Opportunity.**

5.2.1 **Equal Employment Opportunity.** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.2.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

5.3 **Interested Parties Disclosure.** As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

5.4 **Acceptance of Incomplete or Non-Conforming Deliverables.** Each SOW (as such term is defined in the SAAS Terms) may identify certain "Project Key Deliverables." Where an SOW expressly identifies Project Key Deliverables, the SOW shall also include the specific acceptance criteria ("Acceptance Criteria") which must be satisfied for the associated Project Key Deliverable. Acceptance Criteria will be identified in the Project Activities/Deliverables Payment Schedule section of the SOW, typically in a table format and identified by a MS#. Upon delivery of a Project Key Deliverables by Contractor to City, as identified in the applicable Statement of Work, Contractor shall request from City a written response or approval, based solely upon whether the Project Key Deliverable meeting the Acceptance Criteria for such Project Key Deliverable, within ten (10) business days after receipt thereof (the "Inspection Period"). If City does not believe that a Project Key Deliverable meets its Acceptance Criteria, City shall provide a written rejection notice to Contractor by the end of the Inspection Period, including in such rejection notice a reasonably detailed description of the reasons for rejection. The parties shall then promptly meet to discuss the

City's concerns and for any Project Key Deliverable determined to not meet the Acceptance Criteria, as the City's sole remedy and Contractor's sole liability, Contractor will then use commercially reasonable efforts to promptly repair or replace the Project Key Deliverable so that it conforms to the Acceptance Criteria. City shall be deemed to have accepted any Project Key Deliverable that is not timely rejected by the City in accordance with this subsection. Payment for any part or parts of the SaaS Solution or Professional Services provided hereunder, or inspection or testing thereof by City, shall not constitute acceptance or relieve Contractor of its obligations under this Agreement.

5.5 **Delays.**

5.5.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.5.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.6 **Ownership And Use Of Deliverables.** The Contractor shall own all rights, titles, and interests throughout the world in and to the deliverables. City is only provided a limited use right to the SAAS Solution as set forth in the SAAS Terms, Section A (Avolve SAAS Solution).

5.7 **Rights to Proposal and Contractual Material.** All written, tangible material submitted by the Contractor to the City shall become property of the City upon receipt (although the copyright to such material shall remain at all times with Contractor). Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code. For the avoidance of any doubt, any electronic materials, such as the SAAS Solution (including all related documentation) are not the property of the City and are provided to the City subject to the limited use rights set forth in SAAS Terms, Section A (Avolve SAAS Solution).

5.8 **Publications.** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract (as is the case for the SAAS Solution and Professional Services, to which this section does not apply). When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 6. WARRANTIES

6.1 **Warranty – Price.**

6.1.1 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6.2 **Warranty – Services.** The Contractor warrants and represents that for the warranty period (as defined below) all Professional Services to be provided to the City under the Contract will be performed in accordance with the applicable specifications set forth in the applicable SOW.

6.2.1 The warranty period shall be 180 days from the acceptance date for the Project Key Deliverable that included the defective Professional Services. If during the warranty period, the City believes that Professional Services have been provided in breach of this warranty, the City shall promptly provide written notice of the alleged breach to Contractor. The Contractor shall promptly upon receipt of such written notice, meet and investigate the City's concerns. For all timely and valid breach of warranty claims, the Contractor shall, as Contractor's sole liability and the City's sole remedy, perform the Professional Services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section provided that the City does provide written notice within the applicable warranty period.

6.3 **WARRANTY – AGAINST UNDISCLOSED ILICIT CODE:** Provider warrants that, unless authorized in writing by Client, the SAA Solution, shall to Provider's knowledge:

6.3.1 Not contain any hidden file;

6.3.2 Not replicate, transmit or activate itself without control of a human operating the computing equipment on which it resides;

6.3.3 Not alter, damage or erase any data or computer programs without control of a human operating the computing equipment on which it resides;

6.3.4 Not contain any key, node lock, time-out or other function, whether implemented by electronic, mechanical or other means, that restricts or may restrict use or access to the SAAS Solution or data created under this Agreement, based on residency on a specific equipment configuration, frequency of duration of use or other limiting criteria (other than restrictions placed there by Avolve to limit customers' use to their paid-for subscription terms and allow Avolve to suspend access in accordance with the SAAS Terms); and

6.3.5 Not contain any virus, malicious, illicit or similar unrequested code, known to Provider.

SECTION 7. MISCELLANEOUS

7.1 **Place and Condition of Work.** The SAAS Solution shall be provided for remote access by the City as set forth in the SAAS Terms. The Professional Services shall be performed at such locations mutually agreed to by the parties from time to time in writing. It is expected that most, if not all, work will be done remotely.

7.2 **Workforce.**

7.2.1 The Contractor shall employ workers, who are experience in providing services similar to the Professional Services which they will perform under the Contract.

7.2.2 The Contractor shall instruct its employees that they may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract while on the City's property:

7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

Should Contractor become aware that an employee is in violation of Contractor's instructions, Contractor shall promptly remove that employee from providing services to City and inform the City of the circumstances.

7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.3 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor and its employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the Professional Services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind solely to the extent directly arising from the breach of the Contractor's obligations under this paragraph.

7.4 **Significant Event.** The Contractor shall promptly notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which Contractor expects to have a material adverse effect upon the Contractor's ability to meet its contractual obligations, including without limitation the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.5 **Audits and Records.**

7.5.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City, provided such are working with and appointed by the Office of the City Auditor, shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract solely in conjunction with the activities of the Office of the City Auditor. Under no circumstances shall City or its auditor be allowed access to Avolve's other customers' information or accounts. Such audits shall be designed to minimize impact on Contractor's standard business operations and limited to only the least amount of records necessary to complete the audit. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.6 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected.

7.7 **Indemnity.**

7.7.1 Definitions:

7.7.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.7.1.1.1 damage to or loss of the tangible, personal property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.7.1.1.2 death or bodily injury to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

7.7.1.2 "Fault" shall be the negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.7.2 THE CONTRACTOR SHALL DEFEND), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM. SUCH INDEMNIFICATION SHALL BE PURSUANT TO THE INDEMNIFICATION PROCESS SET FORTH IN SAAS TERMS SECTION C(7)(A).

7.8 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which Contractor believes will have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City promptly after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.9 **Notices.** Unless another address is otherwise specified in accordance with the then-current notice addresses and this section, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: CA's Name, Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

Avolve Software

Attn: CFO, Jay Mayne

4835 E. Cactus Rd. Suite 420

Scottsdale, Arizona 85254

7.10 **Confidentiality.** Please see SAAS Terms Section C(6) for confidentiality terms.

7.11 **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.12 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business and Contractor's own employees as part of their compensation plan. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.13 **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.14 **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.15 **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.16 **Assignment-Delegation.** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract. Contractor shall promptly inform the City following closing of any change of control transaction at Avolve of the closing.

7.17 **Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.18 **Modifications.** The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.19 **Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other.

Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.20 **Dispute Resolution.**

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.21 **Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.**

7.21.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

7.21.2 The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

7.21.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.22 **Subcontractors.**

7.22.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and

2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

7.22.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

7.22.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.22.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.22.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.22.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

7.22.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.22.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.22.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

7.22.5 For the avoidance of any doubt, Microsoft, Avolve's hosting partner and all third party software vendors (as such term is defined in the SAAS Terms) are not Subcontractors.

7.23 **Jurisdiction And Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.24 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.25 **Holidays.** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

7.26 **Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

7.27 **Non-Solicitation.**

7.27.1 During the term of the contract, and for a period of six (6) months following termination of the contract, the Contractor, its affiliate, or its agent shall not hire, employ, or solicit for employment or consulting services, a City employee employed in a technical job classification in a City department that engages or uses the services of a Contractor employee.

7.27.2 In the event that a breach of this paragraph occurs the Contractor shall pay liquidated damages to the City in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation; or (ii) ____ percent of the employee's annual compensation while employed by the City. The Contractor shall reimburse the City for any fees and expenses incurred in the enforcement of this provision.

7.27.3 During the term of the contract, and for a period of six (6) months following termination of the contract, a department that engages the services of the Contractor or uses the services of a Contractor employee will not hire a Contractor employee while the employee is performing work under a contract with the City unless the City first obtains the Contractor's.

7.27.4 In the event that a breach of this) occurs, the City shall pay liquidated damages to the Contractor in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation or (ii) _____ percent of the employee's annual compensation while employed by the Contractor

7.28 **Non-Suspension or Debarment Certification.** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

7.29 **Incorporation of Documents. Section 0100, Standard Purchase Definitions,** is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:
https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf

7.30 **Order of Precedence.** The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.

7.30.1 any exceptions to the Offer accepted in writing by the City;

7.30.2 the Supplemental Purchase Terms and Conditions (which are attached hereto as Exhibit B);

7.30.3 the Standard Purchase Terms and Conditions (which are set forth in the main body of the Contract);

7.30.4 the Offer and exhibits; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.

SECTION 8. DATA

8.1. **Data Ownership:** The City will own all right, title and interest in the Customer Data (as such term is define in the SAAS Terms. The service provider shall not access City user accounts or Customer Data, except (1) in the course of data center operations, (2) in response to service or technical issues, whether initially identified by the City or the service provider, (3) as required by the express terms of this contract, or (4) at the City's written request.

8.2. **Data Protection:** Protection of personal privacy and data shall be an integral part of the business activities of the service provider to ensure there is no inappropriate or unauthorized use of City information at any time. To this end, the service provider shall safeguard the confidentiality, integrity and availability of City information and comply with the following conditions:

8.2.1. The service provider shall implement and maintain administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of personal data and non-public data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the service provider applies to its own personal data and non-public data of similar kind.

8.2.2. All Customer Data obtained by the service provider in the performance of this contract shall remain property of the City.

8.2.3. All personal data that is transmitted to and stored within the SAAS Solution by Customer shall be encrypted at rest and in transit with controlled access. The City shall identify personal data to the service provider in writing in advance and the parties shall mutually

agree on the approach to encryption of this personal data, which may depend on the City properly uploading the personal data into the SAAS Solution. Unless otherwise stipulated, the service provider is responsible for encryption of the personal data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be set forth in a mutually agreed upon writing.

8.2.4. Unless otherwise stipulated, the service provider shall encrypt all non-public data that is stored within the SAAS Solution by Customer at rest and in transit. The City shall identify data it deems as non-public data to the service provider in writing in advance and the parties shall mutually agree on the approach to encryption of this data, which may depend on the City properly uploading the data into the SAAS Solution. The level of protection and encryption for all non-public data shall be identified and made a part of this contract.

8.2.5. At no time shall any Customer Data be copied, disclosed or retained by the service provider or any Subcontractor (as defined herein) for subsequent use in any transaction that does not include the City. The term "Subcontractor" means any third party used by service provider to provide services hereunder, but specifically excluding third party software vendors (as defined in the Exhibit B (Avolve SAAS Terms) and any hosted service providers, such as Microsoft).

8.2.6. The service provider shall not use any Customer Data collected in connection with the service issued from this proposal for any purpose other than fulfilling the service.

8.3. **Compliance with Accessibility Standards:** The service provider shall make good faith efforts to, as soon as practical, comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973. The service provider shall separately provide the City with a letter setting forth its good faith efforts to comply with and adhere to this law.

8.4. **Security:** The service provider and the City shall each disclose its non-proprietary security processes and technical limitations to the other such that adequate protection and flexibility can be attained between the City and the service provider. For example: virus checking and port sniffing – the City and the service provider shall understand each other's roles and responsibilities.

8.5. **Security in Compliance with Chapter 521 of the Texas Business and Commerce Code:** Service provider shall comply with all requirements under Chapter 521 of the Texas Business and Commerce Code, including but not limited to being responsible for a program that protects against the unlawful use or disclosure of personal information collected or maintained in the regular course of business. The program shall include policies and procedures for the implementation of administrative, technical, and physical safeguards, and shall also address appropriate corrective action for events of any security breach and proper methods of destroying records containing sensitive personal information.

8.6. **Security Incident or Data Breach Notification:** The service provider shall inform the City of any Data Security Breach (as such term is defined in the SAAS Terms) in accordance with the SAAS Terms as well as any applicable state or federal law requirements.

8.6.1. **Incident Response:** The service provider may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the contract. Discussing security incidents with the City should be handled on

an urgent as-needed basis, as part of service provider communication and mitigation processes as mutually agreed upon, defined by law or contained in the contract.

8.6.2. **Security Incident Reporting Requirements:** The service provider shall report a Data Security Breach or any suspected Data Security Breach to the appropriate City identified contact in accordance with the SAAS Terms.

8.6.3. **Breach Reporting Requirements:** If the service provider has actual knowledge of a confirmed Data Security Breach that affects the security of any City content that is subject to applicable data breach notification law, the service provider shall (1) promptly notify the appropriate City identified contact within the time period identified in the SAAS Terms, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner.

8.7. **Breach Responsibilities:** This section only applies when a Data Security Breach occurs with respect to personal data within the possession or control of service provider.

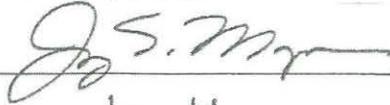
8.7.1. The service provider shall notify the appropriate City identified contact in accordance with the SAAS Terms.

8.7.2. The service provider shall promptly notify the appropriate City identified contact in accordance with the SAAS Terms if it confirms that there is, or reasonably believes that there has been a Data Security Breach. The service provider shall (1) cooperate with the City as reasonably requested by the City to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary. All such activities shall be done in accordance with the SAAS Terms Security Breach subsection.

8.7.3. **Unless otherwise stipulated, if a Data Security Breach is a direct result of solely the service provider's breach of its contract obligation to encrypt personal data (and City and its Users (as such term is defined in the SAAS Terms did not contribute to or cause such breach in any way), the service provider shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by state law; (3) a credit monitoring service required by state (or federal) law; (4) establishing a website or a toll-free number and call center for affected individuals required by state law – all not to exceed the average per record per person cost calculated for data breaches in the United States (currently \$201 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by service provider based on root cause; all (1) through (5) subject to this contract's limitation of liability (as set forth in Section C(7)(b) of the SAAS terms.**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth below.

Avolve Software Corporation

By: 
Name: Jay Mayne
Title: CFO
Date: 2/6/2019

CITY OF AUSTIN

By: 
Name: Dan Dellemonache
Title: Procurement Specialist III
Date: 2/8/19

PRICING

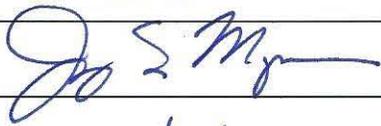
<Update as necessary> Pricing and payment terms are as set forth in Sales Order.

STATEMENT OF WORK ACCEPTANCE

Once fully executed, this document will become the Implementation SOW for the Project defined in this document. Avolve and Customer's signatures below authorizes Avolve to begin the services described above and indicates Customer's agreement to pay the invoices associated with these services delivered as described.

PAYMENT TERMS

Avolve will invoice Customer for Avolve SAAS Solution subscription fees and other professional services in accordance with the Agreement.

Customer		Avolve Software Corporation	
Name		Name	Jay Mayne
Title		Title	CFO
Signature		Signature	
Date		Date	2/6/2019

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

AVOLVE SOFTWARE CORPORATION

CITY OF AUSTIN

By: _____
Signature

By: _____
Signature

Name: _____
Printed Name

Name: _____
Printed Name

Title: _____

Title: _____

Date: _____

Date: _____

List of Exhibits

- Exhibit A Pricing Agreement
- Exhibit B Avolve Software Corporation Software as a Service Agreement
- Exhibit C Non Discrimination Certification, Section 0800
- Exhibit D Non-Suspension or Debarment Certification

**EXHIBIT A
Pricing Agreement**



City of Austin, TX

ProjectDox® ePlan Solution Proposal

September 26, 2018



Prepared by your Avolve Software Representative

Philip Comer
Sales Director, Central Region
4835 East Cactus Road
Suite 420
Scottsdale, AZ 85254
www.avolvesoftware.com

Telephone: (512) 431-6258
Email: pcomer@avolvesoftware.com

Quote Ref #201808-1277



On Premise Licenses Addition, Hosted Option and SaaS Option

Ms. Stacey Wuest
IT Project Manager
City of Austin
505 Barton Springs Road
Austin, TX 78767

September 25, 2018

Subject: **Expansion of EPlan Review Platform across departments**

Dear Stacey,

On behalf of the entire Avolve team, I like to thank you for your commitment to Avolve as we support the City of Austin's efforts to drive efficiencies in its Plan Review processes and improve its interaction with its citizens and commercial enterprises.

Our ePlan Life Cycle solutions and professional services *leads the nation in number of dedicated ePlan installations*, jurisdiction size, years of ePlan experience, the complexity of ePlan projects managed and deployed, and features and functions that support optimum flexibility and ease-of-use by departments and citizenry alike.

We view ePlan services not as an isolated, single department or agency process, but rather as an *enterprise discipline that connects internally and externally to a wide range of public sector, commercial/private entities and their respective processes*. Avolve Software continues to engage in ground-breaking work related to ePlan business process automation, GIS system integration and Building Information Model (BIM) utilization in the review and approval process, as well as downstream ePlan data re-use. ProjectDox is the *only ePlan provided endorsed by the ICC* and we wrote and conduct the training at the ICC for ePlan review.

We greatly appreciate the opportunity to present the City different deployment options as it looks to expand its Avolve Plan Review Platform. You will note that we have proposed three options: ***procurement of incremental software solutions and hosted solution*** and ***our recommended option of SaaS solution***.

We at Avolve look forward to our continued support of your efforts.

Best regards,

Philip Comer
Sales Director, Central Region
Avolve Software
T: (512) 431-6258
pcomer@avolvesoftware.com



On Premise Licenses Addition, Hosted Option and SaaS Option

Option #3: Software-as-a-Service (SaaS) subscription with trade-in of existing licenses

Category	Year 1	Year 2	Year 3	Year 4	Year 5
Software Trade In	(63,000)	(63,000)	(63,000)	(63,000)	(63,000)
Training	60,000	80,000	42,200	20,000	
Professional Services	222,000	180,000	80,000	51,000	30,850
SaaS & Related Services as relates to SaaS	521,623.76	503,199.36	506,670.22	506,670.22	506,670.22
Totals by Year	\$740,623.76	\$700,199.36	\$565,870.72	\$514,670.72	\$474,520.72
Total Five Year					\$2,995,884.78

Detail of software purchased by the City

Product	Date purchased	Amount paid
2 PPR licenses trade up	May 2018	\$40,000
2 Public Works Workflows	May 2018	\$54,000
Base Procurement Instance from RFP	August 2014	\$301,323
Total Software		\$395,323.00

Recommendation

The SaaS option offloads all application and infrastructure management of Avolve instances from the City to Avolve, thus freeing up IT resources. This option with Azure SLAs provides the City full IT support including Applications, Runtimes, SOA/Integration and databases for a small incremental cost per year. The incremental cost of this option is far offset by the savings realized from freeing up IT resources from maintaining the software and infrastructure, enabling IT resources to focus on more value-added services.

For instance, assuming a fully-burden rate for IT staff of \$120,000 per year and assuming the City recovers half a full-time employee (FTE) with the SaaS option, the savings would be as follows:

Incremental SaaS Savings

Example: ½ FTE savings from managing the Avolve hosted or on-premise

\$65,000 X 5 years = \$325,000 savings over 5 years

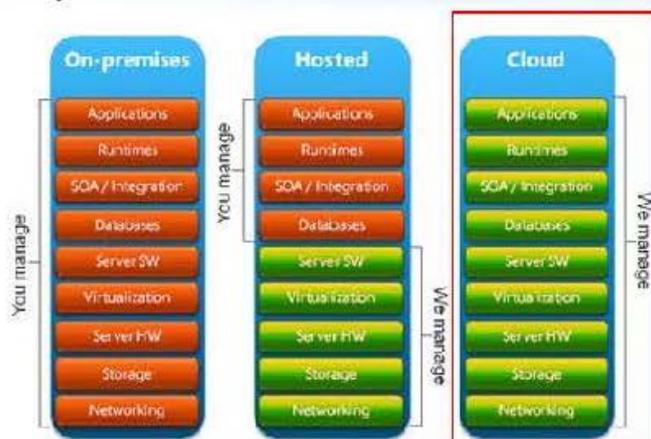


On Premise Licenses Addition, Hosted Option and SaaS Option

Yearly Step upgrade to Avolve software in Avolve Hosted or on-premise
\$10,000 X 5 years = \$50,000

Lastly, with the SaaS option, the City will not incur the cost of an upgrade implementation from version to next, which is included in SaaS subscription. The illustration below summarizes responsibilities of the two parties based on the direction taken. Outlined in red is Avolve's recommended SaaS solution for the City.

On premises vs. in the cloud





On Premise Licenses Addition, Hosted Option and SaaS Option

OPTION 3: SAAS SUBSCRIPTION WITH TRADE-IN OF PREMISE LICENSES HOSTED ON MICROSOFT AZURE

TRAINING

Product Name	Product Code	Description	Qty	Unit Price	Disc	Total Price
ProjectDox Tier 1 Training	PKG-PDOX 1 TRN	Package Includes: <ul style="list-style-type: none"> • 96 users per package for a total of 288 users for the three packages • Introduction to ProjectDox • Markup in ProjectDox • Workflow Training for Reviewers • Workflow Training for Coordinators • Administration Training • Roll Out Training 	3.00	\$65,000.00		\$195,000.00
Marking up (redlining) in ProjectDox	TES-MARK	This full-day Training and Educational Services course includes an instructor-led lecture and demonstration with hands-on lab time to practice using the newly acquired skills for the ProjectDox markup tools and features. Attendees will learn how to use the markup tools to create and edit markups, measure, print, and compare documents and plans in the ProjectDox application. This course is limited to a max of 12 persons per session/course. Requires completion of the Introduction to ProjectDox course Course Length: 7 hr.	2.00	\$3,600.00		\$7,200.00
Training Sub-Total:						\$202,200.00

PROFESSIONAL SERVICES

Product Name	Product Code	Description	Qty	Unit Price	Disc	Total Price
ProService Hourly Rate	PS-225	PPR implementation based on Discovery Blueprint and SOW output.	160.00	\$225.00		\$36,000.00
Parallel Plan Review Workflow Discovery & Documentation	PS-PPR.DD	Services for Discovery and Documentation of each Parallel Plan Review Workflow purchased. Includes: <ul style="list-style-type: none"> • Discovery • Documentation of Scope Design 	1.00	\$50,000.00		\$50,000.00



On Premise Licenses Addition, Hosted Option and SaaS Option

		• Quote for Services required for Implementation (if required)				
Assurance Services	PS-AS	Assurance Services estimates for outside of known additions to the five-year contract and to be used based on mutually agreed and signed off Change Requests.	10.00	\$10,125.00		\$101,250.00
Professional Services for Incremental BIC Workflow	PS-T1-IncBIC	Professional Services for Incremental Best-in-Class Workflow includes: <ul style="list-style-type: none"> • Installation • Orientation & Configuration Requirements Session • Configuration • User Acceptance Testing • Soft Launch 	9.00	\$30,600.00		\$275,400.00
Custom Integration for Amanda and ProjectFlow Incremental Workflows	PS-PF-CINT	Custom integration for 9 workflows to the Amanda land management system. Integration points are defined in the SOW and occur at each step of the workflow to communicate the progress of the workflow as it moves through ProjectDoc. Additional custom work regarding fees and receiving status to progress the workflow are included. Quote is based on the current integration design in ProjectDoc WF. Details of the integration may be found in the related SOW	1	\$46,800.00		\$46,800.00
OAS Advanced Processing Gateway	PS-AP-OAS	Initial Services for Advanced Payment Processing Gateway Analysis includes: - Analysis Review - Configuration Requirements Document Additional quote may be required after analysis	2.00	\$13,500.00		\$27,000.00
Professional Services Package for OAS Tier 1	PS-OAS-T1-PKG	Tier 1 Services Package includes the following: -OAS Set up and Config -OAS Best in Class - Building Application Form -OAS Best in Class - Planning & Zoning Application Form -OAS Database Table for Permit Population -OAS Best in Class Payment Processing Gateway -OAS Remote Training	1.00	\$27,400.00		\$27,400.00
Professional Services Sub-Total						\$563,850.00



On Premise Licenses Addition, Hosted Option and SaaS Option

SAAS

Product Name	Product Code	Description	Qty	Unit Price	Disc	Total Price
Avolve Cloud Test Environment Additional File & DB Storage for Site 1	AFDBS-BU-S1T	Additional Primary File & DB Storage - Test per GB/mo. 614 GB of File Storage Site 1 Price per GB: \$0.12/GB Monthly price: \$76.80 Term: 12 Months	15.00	\$921.60		\$13,824.00
Avolve Cloud Test Environment Additional File & DB Primary Storage	AFDBS-1T	Additional Primary File & DB Storage - Test per GB/mo. 512 GB of File Storage Site 1 Price per GB: \$0.12/GB Monthly price: \$61.44 Term: 12 Months	30.00	\$737.28		\$22,118.40
Avolve Cloud Production Environment Additional DB 5 min Tlog 7-day Storage	ADBS-TLBU-7D-S1P	Additional Database Transaction Logs Backup Storage, 7-Day Site 1 - Production 600 GB of DB 5min Tlog 7-day Storage Site 1 Price per GB: \$0.12/GB Monthly price: \$72 Term: 12 Months	15.00	\$864.00		\$12,960.00
Avolve Cloud Production Environment Additional DB 14-day Tlog Storage for Site 2	ADBS-TLBU-14D-S2P	Additional Database Transaction Logs Backup Storage, 14-Day Site 2 - Production 1200 GB of DB Tlog 14-day Storage Site 2 Price per GB: \$0.12/GB Monthly price: \$168 Term: 12 Months	15.00	\$2,016.00		\$30,240.00
Avolve Cloud Production Environment Additional DB 14-day Tlog Storage for Site 1	ADBS-TLBU-14D-S1P	Additional Database Transaction Logs Backup Storage, 14-Day Site 1 - Production 1200 GB of DB Tlog 14-day Storage Site 1 Price per GB: \$0.12/GB Monthly price: \$144 Term: 12 Months	15.00	\$1,728.00		\$25,920.00
Avolve Cloud Production Environment Additional DB Backup Storage for Site 2	ADBS-BU-S2P	Additional Database Backup Storage, Site 2 - Production 110 GB of DB Storage Site 2 Price per GB: \$0.14/GB Monthly price: \$15.40 Term: 12 Months	15.00	\$184.80		\$2,772.00
Avolve Cloud Data Migration	PS-DATA-MIG	Migration of existing customer data onto the Avolve Cloud for Test and Production.				\$21,600.00
Avolve SaaS Tier 1	SOFT-SAAS1	Tier 1 (Population Equal to or above 500,000) SaaS (Production & Test w/ Managed Services) - 8 Virtual Servers Azure Commercial	60.00	\$28,000.00		\$1,680,000.00



On Premise Licenses Addition, Hosted Option and SaaS Option

Avolve Cloud Development or Sandbox	SOFT-SAAS-D1	Tier 1 (Population Equal to or above 500,000) SaaS (Development - OAS & Pdox w/ Managed Services) - 3 Virtual Servers Azure Commercial	60	\$10,000.00		\$60,000.00
Avolve Cloud Production Environment Additional DB Backup Storage for Site 1	ADBS-BU-S1P	Additional Database Backup Storage, Site 1 - Production 110 GB of DB Storage Site 1 Price per GB: \$0.12/GB Monthly price: \$13.20 Term: 12 Months	15.00	\$158.40		\$2,376.00
Avolve Cloud Production Environment Additional Primary DB Storage	ADBS-1P	Additional Database Primary Storage - Production 100 GB of DB Primary Storage Site 1 Price per GB: \$0.12/GB Monthly price: \$12 Term: 12 Months	15.00	\$144.00		\$2,160.00
Tier 1 Hosting Set Up for Development or Sandbox Environment	P.S.C-SETUP1.D	Provisioning, Configuration and Installation of Hosted ProjectDox & OAS on Development or Sandbox Environment. Does not include data migration.	1.00	\$3,950.00		\$3,950.00
Tier 1 Hosting Set Up for Production & Test Environments	P.S.C-SETUP1	Provisioning, Configuration and Installation of Hosted ProjectDox & OAS on Production and Test Environments. Does not include data migration.	1.00	\$10,500.00		\$10,500.00
Avolve Cloud Production Environment Additional File Backup Storage for Site 2	APFS-BU-S2P	Additional File Backup Storage-Production for Site 2 per GB/mo. 614 GB of File Storage Site 1 Price per GB: \$0.14/GB Monthly price: \$89.60 Term: 12 Months	30.00	\$1,075.20		\$32,256.00
Avolve Cloud Production Environment Additional File Backup Storage for Site 1	APFS-BU-S1P	Additional File Backup Storage-Production for Site 1 per GB/mo. 614 GB of File Storage Site 1 Price per GB: \$0.12/GB Monthly price: \$76.80 Term: 12 Months	30.00	\$921.60		\$27,648.00
Avolve Cloud Production Environment Additional File Primary Storage	APFS-1P	Additional Primary File Storage-Production per GB/mo. 512 GB of File Storage Site 1 Price per GB: \$0.12/GB Monthly price: \$61.44 Term: 12 Months	30.00	\$737.28		\$22,118.40
Tier 1 Hosting Development or Sandbox Environment	HOST-1Dev	Hosting for ProjectDox & OAS Development or Sandbox Environment. Included File and Database Storage: Development or Sandbox Environment	60.00	\$3,950.00		\$237,000.00



On Premise Licenses Addition, Hosted Option and SaaS Option

		<ul style="list-style-type: none"> •512 GBs primary file & DB storage •640 GBs file & DB backup for Site 1 •640 GBs file & DB backup for Site 2 For Additional Storage : Contact Account Executive				
SaaS Sub-Total						\$2,544,833.78

<p>Software, Maintenance and 20% of Services shall be invoiced upon execution of Agreement. Payment for the total amount is due net thirty days (30) from the date of Initial Invoice and shipment of software.</p> <p>First Year Hosting Payment and setup due at time of invoice and execution.</p> <p>Payment via EFT. See notes for details. Travel and Expenses are not included in this total and will be invoiced as incurred.</p>	Grand Total:	\$2,995,884.78
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On Premise Licenses Addition, Hosted Option and SaaS Option

Notes:

EFT Remittance:

Avolve Software / Compass Bank
Routing #: 122105744
Account #: 2519753300

NAME: _____

TITLE: _____

SIGNATURE: _____

DATE: _____

By signing this Order Form customer acknowledge and agrees to, if purchasing (a) licenses and/or support and maintenance, Avolve's Software License and Support Agreement General Terms and Conditions and Avolve's Maintenance and Support Level Agreement; (b) professional services, Avolve's Professional Services Agreement; and (c) training services, the Avolve University Training Terms and Conditions; and (d) hosting services, Avolve's Hosting Service Level Agreement. Customer acknowledges that it has been provided reasonable access to the applicable documents listed herein online at www.avolvesoftware.com and knowingly consents to the same. Resellers acknowledge that they will have end users formally acknowledge and be bound by all applicable Avolve Terms and Conditions as described above.

EXHIBIT B
AVOLVE SOFTWARE CORPORATION
Software as a Services Agreement

This agreement (“Agreement”) is made this _____ (“Effective Date”) by and between Avolve Software Corporation, a Delaware corporation with offices at 4835 E. Cactus Road, Suite 420, Scottsdale, Arizona 85254, United States of America, (“Avolve” or “Services Provider”) and City of Austin (“Customer”).

WHEREAS Avolve offers remotely hosted subscription, software-as-a-service access (on hardware owned or operated on behalf of Avolve by a third party hosting service provider such as Microsoft Corporation) to Avolve’s software (collectively, such hosted electronic plan review and project information management, collaboration and review system, including all software applications, application program interfaces, modules, databases, hardware, infrastructure, documentation and system administration, management and monitoring activities that Avolve provides for the software shall be referred to herein as the “Avolve SAAS Solution”);

WHEREAS Avolve provides professional services (“Professional Services”) to assist customers with among other things, implementation of the Avolve SAAS Solution and training;

WHEREAS the Customer desires to purchase use rights for the Avolve SAAS Solution and related Professional Services (the “Initial Purchase”) from Avolve and, pay for such purchases either directly or pursuant to an agreement between the Customer and a third party financing source reasonably acceptable to Avolve (the “Financing Company”); and

WHEREAS Avolve and Customer now desire to provide the terms and conditions under which Avolve will provide the Initial Purchase to Customer, as well provide the terms and conditions for the Customer to purchase other Professional Services from Avolve, with or without the assistance of Financing Company or another paying agent;

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and promises set forth herein, Avolve and Customer agree as follows.

SECTION A. – AVOLVE SAAS SOLUTION

1. Avolve SAAS Solution.

- a. Use Rights. Subject to Customer’s compliance with all the terms and conditions of this Agreement, Avolve grants to Customer a non-exclusive, non-transferable, non-sublicensable right during the subscription term (“Subscription Term”) identified in the Implementation SOW (attached hereto as Exhibit 2) to permit Users to use the Avolve SAAS Solution identified in the Implementation SOW for Customer’s internal business operations, solely for the specific Business Unit(s) as further set forth in the Implementation SOW. Should Customer desire to reorganize any such Business Unit, it shall provide Avolve written notice as soon as possible following the determination of reorganization, so that Avolve may review the planned reorganization to determine if it is consistent with the Business Unit limitation in this use rights grant and, if not, what additional fees will be required due to Customer’s reorganization to include additional Business Units. As used in this Agreement, “User” means authorized Customer employees and third parties that require access to the Avolve SAAS Solution in connection with the Customer’s internal business operations, such as the Customer’s administrators, contractors, reviewers, and applicants. There may be different types/levels of Users for the Avolve SAAS Solution, such as administrator Users, if so identified in the Implementation SOW.
- b. Storage. The Avolve SAAS Solution will include for the initial Subscription Term the amount of storage set forth in the Implementation SOW. Customer acknowledges that should Customer exceed the included storage limits after Avolve has sent notice to Customer in accordance with Avolve’s then-current standard storage limits and data backup practices (available upon request), additional charges will be incurred by Customer. Avolve shall invoice Customer for any such additional incurred charges, and Customer shall pay such invoices, in accordance with Section C of this Agreement. Avolve may, in its sole discretion, modify the amount of standard storage included at no additional charge with the Avolve SAAS Solution, with such modification to become effective upon the effective date of any

renewal term provided that Avolve provides Customer written notice of such modification at least ninety days in advance of the expiration of the then-current Subscription Term.

- c. Restrictions on Use. Customer will not, and will ensure that its Users do not: (i) except as expressly stated herein, copy, reproduce, distribute, republish, download, display, host or transmit in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means, any part of Avolve SAAS Solution or any other Avolve materials; (ii) use the Avolve SAAS Solution or any other Avolve materials to provide services to third parties (e.g., business process outsourcing, service bureau applications or third party training); (iii) assign, sublicense, sell, lease, loan, resell, sublicense or otherwise distribute or transfer or convey the Avolve SAAS Solution or any other Avolve materials, or pledge as security or otherwise encumber Customer's rights under this Agreement; (iv) make any use of or perform any acts with respect to the Avolve SAAS Solution or any other Avolve materials other than as expressly permitted in accordance with the terms of this Agreement; or (v) use the Avolve SAAS Solution components other than those specifically identified in the Implementation SOW and then only as part of Avolve SAAS Solution as a whole, even if it is also technically possible for Customer to access other Avolve SAAS Solution components; or (vi) modify, further develop or create any derivative works of, disassemble, decompile, reverse engineer or otherwise attempt to obtain or perceive the source code from which any part of Avolve SAAS Solution is compiled or interpreted, or access or use Avolve SAAS Solution in order to build a similar or competitive product or service; (vii) allow use of the Avolve SAAS Solution or any other Avolve materials by anyone other than authorized Users; (viii) publish any results of benchmark tests run on Avolve SAAS Solution; (ix) unless otherwise expressly authorized in writing by Avolve, use the Avolve SAAS Solution in connection with any software product or tools, or any other software as a service not provided by Avolve; and (x) input, upload, transmit or otherwise provide to or through Avolve SAAS Solution or any systems used by Avolve anything that is unlawful, injurious, or contains, transmits or activates any harmful code. Customer acknowledges that nothing herein will be construed to grant Customer any right to obtain or use the source code from which Avolve SAAS Solution is delivered. Customer shall not tamper with or attempt to disable any security device or protection used by Avolve SAAS Solution or any other Avolve materials, nor shall Customer damage, destroy, disrupt or otherwise impede or harm in any manner the Avolve SAAS Solution or any systems used by Avolve. Customer agrees to take all commercially reasonable steps to ensure that Users abide by the terms of this Agreement
- d. High-Risk Activities. The Avolve SAAS Solution is not fault-tolerant and is not designed, manufactured, or intended for use or resale as online control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines or weapons systems, in which the failure of the Avolve SAAS Solution or derived binaries could lead directly to death, personal injury, or severe physical or environmental damage. The Avolve SAAS Solution is also not designed or intended for use with Federal Tax Information (FTI) as defined in the Internal Revenue Service Publication 1075 (IRS 1075) or criminal justice information ("CJI"), such as fingerprint records and criminal histories. Customer shall not use the Avolve SAAS Solution for any of these high-risk activities, including without limitation transmitting, storing or otherwise processing any FTI or CJI with the Avolve SAAS Solution.
- e. Project Administrator. Customer agrees, if not already designed in the Implementation SOW, to promptly designate in writing one person to be the Customer's point person responsible for all communications with Avolve (the Customer's "Project Administrator"). The Project Administrator is responsible for project administration duties as documented in the Avolve systems guides, statements of work, and documentation (collectively, the "Documentation"), as provided for time to time by Avolve to Customer.
- f. Customer Connection. During the Term, the Customer is responsible for obtaining and maintaining connection to the Avolve SAAS Solution, including the Internet connection. Avolve shall not be responsible for any inadequacy or lack of functionality of Customer's connection to the Avolve SAAS Solution or the inability of the Customer's computer, telecommunications provider, or other equipment and capabilities to access or use the Avolve SAAS Solution.

- g. Third Party Service Providers and Components. Notwithstanding anything to the contrary in this Agreement or any other documents between Avolve and Customer, Customer acknowledges and agrees as follows.
1. The Avolve SAAS Solution and its component parts are protected by copyright and other propriety rights of Avolve and one or more third party software vendors (including Oracle and Open Text Corporation (“OTC”)) (all such third party vendors, including without limitation Oracle and OTC, shall be referred to herein as “third party vendors” or “third party software vendors”). Customer may be held directly responsible by such third party vendors for acts relating to the Avolve SAAS Solution component parts that are not authorized by this Agreement. Customer’s use of such third party software is limited to usage only in conjunction with Avolve SAAS Solution and Customer acknowledges that it is not allowed to modify such third party software or use it independent from Avolve SAAS Solution. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE CUSTOMER WAIVES, AND WILL CAUSE ITS USERS TO WAIVE, ALL CLAIMS AND CAUSES OF ACTION AGAINST SUCH THIRD PARTY SOFTWARE VENDORS THAT ARISE UNDER THIS AGREEMENT.
 2. If Customer purchases from Avolve hosting of the Avolve SAAS Solution on the Microsoft® Windows Azure™ platform, the terms and conditions for such cloud services as such may be updated by Microsoft Corporation from time to time, are found online on at <https://docs.microsoft.com/en-us/partner-center/agreements> and THAT (A) THE HOSTED SERVICES WILL BE PERFORMED SOLELY AND EXCLUSIVELY SUBJECT TO MICROSOFT CORPORATION'S MICROSOFT CLOUD AGREEMENT (US GOVERNMENT COMMUNITY CLOUD), (B) THAT AVOLVE DOES NOT GUARANTY MICROSOFT CORPORATION'S OBLIGATIONS PURSUANT TO THE MICROSOFT CLOUD AGREEMENT, AND (C) NOR CAN AVOLVE GRANT ANY WARRANTIES OR ADDITIONAL TERMS TO THE CUSTOMER AS TO THE HOSTED SERVICES UNDER THIS AGREEMENT. THE HOSTED SERVICES ARE SOLELY GOVERNED BY THE MICROSOFT CLOUD AGREEMENT, TO WHICH AVOVLE IS NOT A PARTY. Microsoft Corporation makes certain service level commitments to its customers, which are available online in the Microsoft Corporation's SLAs at <https://azure.microsoft.com/en-us/support/legal/sla/summary/>. If Customer desires to make a claim under the Microsoft Corporation SLAs, Customer shall submit the claim through Avolve. Avolve will escalate the claim to Microsoft Corporation for review. If Microsoft Corporation determines that a credit is due, Avolve will credit Customer the amount Microsoft Corporation has paid to Avolve for the SLA credit promptly after receiving the credit from Microsoft Corporation.
- h. Compatibility Updates. Avolve will make commercially reasonable efforts to update the Avolve SAAS Solution, if and as required, to cause it to operate under new versions or releases of current operating systems and internet browsers, within fifteen (15) months of general availability.
- i. Passwords, Access. Customer may designate and add Users and shall provide and assign unique passwords and user names to each authorized User pursuant to Avolve’s then-current protocols. At Avolve’s discretion, Users may be added either by Avolve or directly by Customer. Customer shall ensure that multiple Users do not share a password or user name. Customer further acknowledges and agrees that it is prohibited from sharing passwords and/or user names with unauthorized users. Customer will be responsible for the confidentiality and use of its Users passwords and user names. Avolve will act as though any electronic communications it receives under such passwords, user names, and/or account numbers have been sent by Customer. Customer agrees to immediately notify Avolve if it becomes aware of any loss or theft or unauthorized use of any of passwords, user names, and/or account numbers. Customer agrees not to access Avolve Cloud by any means other than through the interfaces that are provided by Avolve.

- j. Transmission Of Data. Customer understands that the technical processing and transmission of Customer Data is necessary to use the Avolve SAAS Solution, and consents to Avolve's interception and storage of Customer Data. Customer understands that its Users or Avolve may be transmitting Customer Data over the Internet, and over various networks, only part of which may be owned by Avolve. Avolve is not responsible for any portions of Customer Data that are lost, altered, intercepted or stored without authorization during the transmission of Customer Data across networks not owned by Avolve except to the extent directly due to Avolve's breach of this Agreement.
 - k. Customer Responsibilities. Customer will (a) be responsible for Users' compliance with this Agreement, (b) be responsible for the accuracy, quality and legality of Customer Data and the means by which it acquired Customer Data, (c) be responsible for cooperating and assisting Avolve as reasonably requested by Avolve to facilitate performance of its obligations and exercising of its rights under this Agreement, (d) use the Avolve SAAS Solution and any other materials provided by Avolve only in accordance with the Documentation and applicable laws and government regulations, including complying with all applicable legal requirements regarding privacy and data protection so as to not violate the intellectual property, privacy or any other rights of any third parties, and (e) use commercially reasonable efforts to prevent any security breach, including any unauthorized access to or use of the Avolve SAAS Solution. Should Customer become aware of any actual or suspected security breach, Customer shall promptly notify Avolve and take all reasonable and lawful measures within its control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Avolve SAAS Solution). Customer shall provide sufficient notice to, and obtain sufficient consent from, its Users and any other party providing personal data to Avolve and its suppliers (including the Microsoft Corporation) to permit the processing of data by Avolve and its supplier, and their respective affiliates, subsidiaries, and service providers solely to the extent such processing of data is expressly allowed for under this Agreement or otherwise mutually agreed to in writing by the parties.
 - l. Data Backup. The Avolve SAAS Solution is programmed to perform data backups of Customer Data stored within the Avolve SAAS Solution in accordance with Avolve's then-current standard storage limits and data backup practices (available upon request). Additional data backups may be purchased for an additional fee from Avolve and such additional data backup services shall be documented in an SOW pursuant to Section B of this Agreement. In the event of any loss, destruction, damage or corruption of Customer Data caused by Avolve or the Avolve SAAS Solution, Avolve, as its sole obligation and liability and as Customer's sole remedy, will use commercially reasonable efforts to restore Customer Data from Avolve's most current backup of Customer Data.
 - m. Ownership. Customer acknowledges and agrees that Avolve owns all right, title, and interest in and to all intellectual property rights (including all derivatives or improvements thereof) in the Avolve SAAS Solution and any suggestions, enhancements requests, feedback, recommendations or other information provided by Customer or any of its Users related to the Avolve SAAS Solution. Customer's use rights to the Avolve SAAS Solution and the related materials supplied by Avolve pursuant to this Agreement are strictly limited to the right to use the proprietary rights in accordance with the terms of this Agreement. No right of ownership, expressed or implied, is granted under this Agreement.
2. Security. The security, privacy and data protection commitments set forth in this Agreement only apply to products and services provided by Avolve directly to Customer and do not include any products or services resold by Avolve hereunder, including any hosting services provided by Microsoft Corporation pursuant to the Microsoft Cloud Agreement.
- a. Security Program. Avolve has implemented and maintains an information security program that incorporates administrative, technical, and physical safeguards designed to protect the security, availability, privacy, confidentiality, and integrity of the Customer Data provided by Customer and its Users to Avolve in accordance with this Agreement.
 - b. Annual Audit. Avolve will use commercially reasonable efforts to conduct an annual security audit of Avolve using an independent third party selected by Avolve. Upon the Customer's written request, a copy of the final report from any such audit shall be promptly provided the Customer. The Customer

agrees that any such reports or other information provided to Customer concerning any audit shall be the Confidential Information of Avolve. In addition, Avolve shall promptly provide upon the Customer's request, a copy of Avolve's then-current hosting service provider's most recent SOC 2, Type 2 audit and report, in the format provided by the hosting service provider to Avolve.

- c. Security Breach. Avolve will notify Customer promptly and in no event later than one (1) business day following Avolve's discovery of a Data Security Breach (defined below) and shall (i) undertake a reasonable investigation of the reasons for and the circumstances surrounding such Data Security Breach and (ii) reasonably cooperate with Customer in connection with such investigation, including by providing Customer with an initial summary of the results of Avolve's investigation as soon as possible, but in all cases within two (2) business days after the date Avolve discovered or reasonably suspected a Data Security Breach, and then regular updates on the investigation as it progresses; (iii) not make any public announcements relating to such Data Security Breach without Customer's prior written approval, which shall not be unreasonably withheld; (iv) use commercially reasonable efforts to take all necessary and appropriate corrective action reasonably possible on Avolve's part designed to prevent a recurrence of such Data Security Breach; and (v) collect and preserve evidence concerning the discovery, cause, vulnerability, remedial actions and impact related to such Data Security Breach, which shall meet reasonable expectations of forensic admissibility. In addition, each party shall fully comply with their respective obligations under applicable law to send notice to individuals or entities whose Confidential Information was or may have been affected by the Data Security Breach. In the event of any Data Security Breach is caused by Avolve, Customer shall have, in addition to all other rights and remedies available under this Agreement, law and equity, the right to terminate the Agreement upon thirty (30) days prior written notice. For purposes of this Agreement, the term "Data Security Breach" shall mean any of the following occurring in connection with Customer Data in connection with Customer's and its Users' authorized use of the Avolve SAAS Solution, regardless of the size of the Customer Data implicated: (a) the loss or misuse of Customer Data; and (b) disclosure to, or acquisition, access or use by, any person not authorized to receive Customer Data, other than in circumstances in which the disclosure, acquisition, access or use is made in good faith and within the course and scope of the employment with Avolve or other professional relationship with Avolve and does not result in any further unauthorized disclosure, acquisition, access or use of Customer Data.
3. Suspension Right. Avolve reserves the right to include disabling devices in the service and software provided under this Agreement and to use such disabling devices to suspend access and/or use when any payment is overdue or when Avolve believes that Users are using the Avolve SAAS Solution and/or any other materials or services provided by Avolve hereunder not in accordance with the Documentation, this Agreement and/or applicable laws and government regulations. In addition, if Customer is using Microsoft Corporation for hosting services, Microsoft Corporation may terminate or suspend Customer's hosting services in accordance with the Microsoft Cloud Agreement and, should this happen, Customer will not be able to access the Avolve SAAS Solution. Customer agrees that Avolve shall not be liable to Customer, Users or to any third party for any suspension or inability to access the Avolve SAAS Solution pursuant to this Section A(3). If suspended for failure to pay, upon payment in full of all amounts overdue (including any interest owed), Customer may request the reactivation of its account. Avolve shall reactivate promptly after receiving in advance all applicable reactivation fees, provided that Avolve has not already terminated this Agreement.
4. Ownership and Disposition of Customer Owned Data, Hosting Location. "Customer Data" refers to the data provided by the Customer that resides in the Customer's Avolve SAAS Solution environment, including any plan review, project drawings and associated project documents. Customer shall own all Customer Data that may reside within Contractor's hosting environment, to include Disaster recovery site, equipment and media. Contractor is granted no rights hereunder to use the Customer Data except to the extent necessary to fulfill its obligations to Customer under this Agreement. Unless approved in writing by Customer, Avolve shall host the Avolve SAAS Solution provided to Customer hereunder from a data center located within the United States. Upon termination or expiration of Customer's right to use the Avolve SAAS Solution for any reason other than Customer's uncured material breach, for the first thirty (30) calendar days following termination or expiration, Customer may request in writing that Avolve provide a copy of Customer's then-current Customer Data and, for no additional cost, Avolve shall provide a copy in a mutually agreed upon format on media supplied by the

Customer. If the parties are unable to mutually agree upon the format or the media supplied by Customer is not acceptable to Avolve, Avolve will use commercially reasonable efforts to still provide a copy of the Customer Data but Avolve may charge a reasonable professional services fee for increased costs incurred. After this time period has expired, Avolve has no further obligation to retain the Customer Data and shall use commercially reasonable efforts to promptly delete all Customer Data from the Avolve SAAS Solution, in accordance with Avolve's then current data deletion practices, which are available upon request to Customer. Should Customer desire different deletion practices, Avolve will comply with any commercially reasonable request but an additional cost may apply.

5. Verification. Avolve shall be permitted to audit (at least once annually and in accordance with Avolve standard procedures, which may include on-site and/or remote audit) the usage of the Avolve SAAS Solution and any other materials provided by Avolve to Customer. Customer shall cooperate reasonably in the conduct of such audits. In the event an audit reveals that (i) Customer underpaid fees to Avolve and/or (ii) that Customer has used in excess of the use rights granted herein, Customer shall pay such underpaid fees for such excess usage. Reasonable costs of Avolve's audit shall be paid by Customer if the audit results indicate usage in excess of the authorized quantities or levels. Avolve reserves all rights at law and equity with respect to both Customer's underpayment of fees and usage in excess of the authorized quantities or levels.

SECTION B. – PROFESSIONAL SERVICES AND SOWS

1. Statements of Work. From time-to-time during the Term of this Agreement, the parties may enter into statements-of-work (each being an "SOW") for Avolve SAAS Solution use rights (including additional storage) and/or Professional Services on terms mutually agreed in writing between the parties in the SOW, including, without limitation, scope of services, expected deliverables, milestone dates, acceptance procedures and criteria, fees and other such matters. No SOW shall be binding until executed by both parties. Each SOW will be incorporated into and subject to this Agreement. In the case of any conflict between the SOW and this Agreement, this Agreement shall control unless the SOW specifically states otherwise.

SECTION C. – GENERAL TERMS AND CONDITIONS

1. Fees.
 - a. Implementation SOW and Additional Storage Fees. The Implementation SOW includes the Avolve SAAS Solution subscription fees, as well as the training and implementation professional services; which, unless set forth otherwise in the Implementation SOW, shall be invoiced by Avolve in full, in advance on the Effective Date. Additional storage fees shall be as set forth in the then-current standard storage limits and data backup practices document, a copy of which is available from Avolve upon request. Additional storage fees will be invoiced in accordance with the then-current standard storage limits and data backup practices document.
 - b. Other SOWs. Any SOWs that Avolve and the Customer may execute from time to time during the Term of this Agreement shall include within them the applicable fees, including whether the Avolve SAAS Solution subscription fees and/or Professional Services fees are being paid by Customer through Financing Company, by Customer through another paying agent, or by Customer directly to Avolve. Unless otherwise specified in the SOW, Professional Services fees will be invoiced as the Professional Services are delivered and Avolve SAAS Solution subscription fees will be invoiced yearly, in advance, in full at the time the SOW is executed.
 - c. General Terms. Unless set forth otherwise in an SOW, payment on all invoiced amounts shall be due thirty (30) days from receipt of invoice, with past due amounts accruing interest at the rate of the lesser of either 18% per annum or the maximum amount as allowed by law.

Avolve will invoice for the Avolve SAAS Solution subscription fees yearly, in advance, with the first invoice being issued on the Effective Date of this Agreement. The Customer agrees to pay all invoiced subscription fees

net thirty (30) days from receipt of invoice, with past due amounts accruing interest at the rate of the lesser of either 18% per annum or the maximum amount as allowed by law. All fees are due in advance, irrevocable and non-refundable (except as expressly set forth otherwise in this Agreement). Customer agrees to provide Avolve with complete and accurate billing and contact information.

2. Taxes. Fees and other charges described in this Agreement do not include federal, state or local sales, foreign withholding, use, property, excise, service, or similar transaction taxes ("Tax(es)") now or hereafter levied, all of which shall be for Customer's account. Any applicable direct pay permits or valid tax-exempt certificates must be provided to Avolve prior to the execution of this Agreement. If Avolve is required to pay Taxes, Customer shall reimburse Avolve for such amounts.
3. Term. Except if terminated earlier in accordance with this Section C(3), this Agreement shall commence on the Effective Date and shall continue for the longer of either (a) the expiration of the Subscription Term for the Avolve SAAS Solution or (b) the completion of all Professional Services under all SOWs. Except as otherwise provided in any SOW, UPON THE EXPIRATION OF THE INITIAL TERM, THE SUBSCRIPTION TERM SHALL AUTOMATICALLY RENEW FOR SUCCESSIVE RENEWAL TERMS EACH EQUAL TO TWELVE (12) MONTHS, AT AVOLVE'S THEN CURRENT FEES FOR CUSTOMER'S THEN CURRENT USAGE, UNLESS EITHER PARTY PROVIDES NOTICE OF NON-RENEWAL AS SET FORTH IN THIS SECTION C(3). Avolve will provide notice of non-renewal or a notice of the fees due for each Renewal Term at least sixty (60) days prior to the commencement of the Renewal Term. If a notice of fees is provided, it will be in the form of an invoice. Customer acknowledges that it is its responsibility to provide a current email address to Avolve and to monitor such address for such notices. Customer may elect not to renew a Subscription Term by providing notice to Avolve at least thirty (30) days prior to the commencement of the Renewal Term.
4. Termination. In addition to any termination rights that may be set forth in a specific SOW, either party may terminate this Agreement immediately upon written notice in the event that the other party materially breaches this Agreement and thereafter has failed to cure such material breach (or commenced diligent efforts to cure such breach that are reasonably acceptable to the terminating party) within thirty (30) days after receiving written notice thereof. Without prejudice to either party's rights to terminate set forth in the prior sentence, if Customer has purchased from Avolve hosting of the Avolve SAAS Solution on the Microsoft® Windows Azure™ platform, and Microsoft Corporation terminates the Microsoft Cloud Agreement during a Subscription Term, Avolve and Customer shall act in good faith to determine a mutually acceptable replacement provider promptly upon receiving notice of Microsoft Corporation's intent to terminate the Microsoft Cloud Agreement.
5. Force Majeure. Any delay or nonperformance of any provision of this Agreement (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.
6. Confidentiality. Each party shall use commercially reasonable efforts to hold confidential information ("Confidential Information") of the other in confidence. All Confidential Information (including but not limited to data) shall (i) remain the sole property of the disclosing party and (ii) be used by the receiving party only as authorized herein. Information will not be considered to be Confidential Information if (i) available to the public other than by a breach of this agreement; (ii) rightfully received from a third party not in breach of any obligation of confidentiality, (iii) independently developed by or for a party without access to Confidential Information of the other; (iv) lawfully known to the receiving party at the time of disclosure, (v) produced in compliance with applicable law, securities reporting requirement or a government or court order, or a request under the Texas Public Information Act, provided the other party is given notice and an opportunity to intervene; or (vi) it does not constitute a trade secret and more than three (3) years have elapsed from the date of disclosure. If Avolve receives a request for Customer Data (either directly or as redirected to Avolve by the Microsoft Corporation), then Avolve shall redirect the law enforcement agency to request that data directly from Customer. If compelled to disclose Customer Data to law enforcement, then Avolve shall promptly notify Customer and provide a copy of the demand, unless legally prohibited from doing so. To the extent required by law, Customer shall notify

individual Users that their data may be processed for the purpose of disclosing it to law enforcement of other governmental authorities as directed by Avolve, and shall obtain the User's consent to the same.

7. Indemnification; Limitation of Liability.

- a. Indemnification. If a third party makes a claim against the Customer that any Customer's use of the Avolve SAAS Solution in accordance with the terms of this Agreement infringes such third party's intellectual property rights, Avolve, at its sole cost and expense, will defend Customer against the claim and indemnify Customer from the damages, losses, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by Avolve, provided that Customer: (i) notifies Avolve promptly in writing of the claim; (ii) gives Avolve sole control of the defense and any settlement negotiations; and (iii) gives Avolve reasonable assistance in the defense of such claim. If Avolve believes or it is determined that the Avolve SAAS Solution has violated a third party's intellectual property rights, Avolve may choose to either modify the Avolve SAAS Solution to be non-infringing or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, Avolve may terminate Customer's use rights and refund any unused, prepaid fees Customer may have paid to Avolve. Avolve will not indemnify the Customer to the extent that the alleged infringement arises from (1) the combination, operation, or use of the Avolve SAAS Solution with products, services, information, materials, technologies, business methods or processes not furnished by Avolve; (2) modifications to the Avolve SAAS Solution, which modifications are not made by Avolve; (3) failure to use updates to the Avolve SAAS Solution provided by Avolve; or (4) use of Avolve SAAS Solution except in accordance with any applicable Documentation or specifications. This section provides THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF AVOLVE AND ITS LICENSORS TO CUSTOMER, AND IS CUSTOMER'S SOLE REMEDY, WITH RESPECT TO THE INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS.
- b. Limitation of Liability. In no event will Avolve be liable for special, indirect, incidental, consequential, or exemplary damages, including, without limitation, any damages resulting from loss of use, loss of data, interruption of business activities, or failure to realize savings arising out of or in connection with this agreement, including without limitation use of the Avolve SAAS Solution and the provision of the Professional Services. Except for direct damages and expenses associated with Avolve's obligation to indemnify Customer pursuant to Section C (7) (a), and except for insurance claims, Avolve's aggregate, cumulative liability for damages and expenses arising out of this Agreement, whether based on a theory of contract or tort, including negligence and strict liability, will be limited to three million US dollars. Such fees reflect and are set in reliance upon this limitation of liability. The limited remedies set forth in this Agreement shall apply notwithstanding the failure of their essential purpose.

8. Support; Warranties.

- a. Support. During the Customer's Subscription Term, at no additional cost to the Customer, Avolve shall provide the Avolve SAAS Solution in accordance with Avolve's Service Level Agreement (attached hereto as Exhibit 1).
- b. Warranties. Customer warrants and covenants that it owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by Avolve and processed in accordance with this Agreement, they do not and will not infringe, misappropriate or otherwise violate any intellectual property rights, or any privacy or other rights of any third party or violate any applicable laws or government regulations, including but not limited to all foreign, United States federal and United States state recording laws. Customer further warrants that it is one of the following: (i) a bureau, office, agency, department or other entity of the United States Government; (ii) any agency of a state or local government in the United States; (iii) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state jurisdiction and geographic boundaries; or (iv) a federally-recognized tribal entity

performing tribal governmental functions and eligible for funding and services from the US Department of Interior by virtue of its status as an Indian tribe.

- c. Disclaimer. Avolve AND ITS SUPPLIERS AND LICENSORS DISCLAIM ALL OTHER WARRANTIES STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO WARRANTY IS GIVEN AS TO ACCURACY, ERROR-FREE OR UNINTERRUPTED SERVICE. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICES, ANY AVOLVE MATERIALS, THE AVOLVE SAAS SOLUTION OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR ITS PURPOSES. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS. Avolve makes no warranties or conditions as to any services or products distributed under a third-party name, copyright, trademark or trade name that may be offered with or incorporated with the Avolve SAAS Solution or Professional Services provided by Avolve hereunder (such as the Microsoft hosting services). To the maximum extent permitted by law, Avolve will have no liability in connection with the third-party services or products.

9. Notices: This clause is intentionally removed.

10. Governing Law. This clause is intentionally removed.

11. Entire Agreement. This clause is intentionally removed.

12. Severability. Should any court of competent jurisdiction declare any term of this Agreement void or unenforceable, such declaration shall have no effect on the remaining terms hereof.

13. Assignment. These services and any other information or rights provided by Avolve, may not be sold, leased, assigned, sublicensed or otherwise transferred in whole or in part. Customer may not assign this Agreement or the benefits there from in whole or in part without the prior written consent of Avolve, which consent shall not be unreasonably withheld. Any assignment made in conflict with this provision shall be voidable at the option of Avolve.

14. Independent Contractor. Avolve is an independent contractor and not an employee of the Customer. Any personnel performing services under this Agreement on behalf of Avolve shall at all times be under Avolve's exclusive direction and control. Avolve shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of services under this Agreement and as required by law. Avolve shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, and worker's compensation insurance.

15. Amendment. This Agreement may only be modified by written amendment signed by authorized representatives of both parties.

16. Hierarchy. The following order of precedence shall be applied in the event of conflict or inconsistency between provisions of the components of this Agreement: (i) this Agreement and (ii) the applicable Avolve Support SLA or SOW. Notwithstanding the foregoing, if any part of the Avolve Support SLA or SOW expressly states that it shall control over the Agreement, it shall so control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth below.

Avolve Software Corporation

CITY OF AUSTIN

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**EXHIBIT 1 – SERVICES SERVICE LEVEL AGREEMENT (SLA)
SUPPORT PROCESS AND SERVICE LEVEL AGREEMENT**

Avolve’s current support process and service level commitments (“Support”) are defined below.

Support Portal. Avolve provides Support through its Support Portal (<https://support.avolvesoftware.com>). All issues can be logged using the portal or through an on-call support number. Customer personnel receive Support Portal login credentials promptly following purchase of rights to use the Avolve SAAS Solution. After a login is received, the Customer may enter, track, update, and report on trouble ticket, as well as communicate with Avolve helpdesk staff via phone, email, web meeting, and/or ticket notes. Help, FAQs, Documentation, and a Knowledge-base are also available at the Avolve support portal.

Support Hours. 24x7 live customer support.

Planned Downtime. Avolve or its third-party agent may render the Avolve SAAS Solution unavailable in order to perform upgrades, updates, patches, enhancements and routine maintenance activities, so long as the Avolve SAAS Solution is only unavailable to Customer and its Customer Users outside of the hours of 7 AM through 7 PM Mountain Standard Time on business days during the Subscription Term. Avolve shall provide no less than five (5) days advance notice to Customer of any planned downtime. Customer acknowledges that in the case of emergencies, Avolve or its third-party agents may render the Avolve SAAS Solution unavailable in order to address the emergency. In such situations, if reasonably feasible, Avolve will provide notice to Customer in advance of rendering the Avolve SAAS Solution unavailable or, if not reasonably feasible, notice to Customer promptly following the rendering of the Avolve SAAS Solution unavailable. Customer understands and agrees that Avolve shall not be liable for any such interruption in access to the Avolve SAAS Solution for downtime occurring pursuant to this paragraph (collectively, referred to herein as “Planned Downtime”).

On-Site Emergency Support. Customer may request on-site emergency operational support services as a separate and distinct billable service. In such cases and at its discretion, Avolve will dispatch appropriate technical staff to deliver on-site technical services.

Problem Determination and Resolution. Avolve resources are allocated to resolve reported problems based on the severity level as described in the following table. Avolve uses commercially reasonable efforts to provide a prompt acknowledgement, acceptable resolution, workaround, or a plan for the provision of a resolution or acceptable workaround in the timeframe set forth below:

Severity Level	Definition	Response Time	Resolution Commitment
System Down	An error that causes a catastrophic failure substantially impacting Customer’s business.	1 Hour via 800# (1 Hour if ticket submitted online)	The support engineer (during business or non-business hours) will try to resolve the issue within 15-30 mins. If it requires further investigation and longer resolution time, it is passed onto tier 2 or 3 support during business hours*. Infrastructure issues are often resolved quickly such as server or system restart. Any potential system alerts will be promptly addressed in an effort to avoid issues from occurring.
High	An error that causes Avolve product to fail without significant business impact or causes a substantial reduction in performance.	1 Hour via 800# (24 Hours if ticket submitted online)	The support engineer (during business or non-business hours) will try to resolve the issue within 15-30 mins. If it requires further investigation and longer resolution time, it is passed onto tier 2 or 3 support during business hours*. Infrastructure issues are often resolved quickly such as server or system restart.

Severity Level	Definition	Response Time	Resolution Commitment
			Any potential system alerts will be promptly addressed in an effort to avoid issues from occurring.
Medium	An error that causes only minor impact on use of the product.	1 Hour via 800# (72 Hours if ticket submitted online)	Avolve and Customer will commit resources during normal business hours* for problem resolution.
Low	A service request for a new feature, additional documentation, or an explanation of product functionality.	1 Hour via 800# (Within 5 days if ticket submitted online)	Avolve and Customer will commit resources during normal business hours* for problem resolution.

*Normal Business Hours: 8:00 a.m. through 5:00 p.m., Monday through Friday (excluding standard holidays), Mountain Standard Time.

- **Response Time.** Once a problem has been reported, the Customer receives an acknowledgement by email, phone or the through the support portal. Avolve will begin the process of problem determination and resolution at this point. The time the ticket is submitted and the response time will be logged to ensure SLA is met.
- **Status Updates.** During the problem determination and resolution process, Customer may receive regular communications, via email, phone or the support portal, as to the status of the problem determination and resolution. All communications should be logged in Avolve’s support system including date, time, and contact name. This helps Avolve and the customer determine the status and duration of the issue reported.
- **Resolution.** In response to the problem reported, Customer will receive, as appropriate, one of the following resolutions: an existing correction, a new correction, a viable workaround, or a plan on how the problem will be addressed.
- **Severity Re-classification.** If Customer determines that the severity of a previously reported issue should be re-classified or escalated, it should contact Avolve Support with request.

Unsupported Issues. Avolve does not cover under Support, and the SLA does not include, the following conditions (collectively, the “Unsupported Issues”).

- Any Avolve SAAS Solution use not covered by an active support contract and/or not in compliance with a valid agreement with Avolve. Authorized users of the Avolve SAAS Solution are entitled to Support as part of their use fee.
- Any Avolve SAAS Solution that is altered or modified other than as approved in writing by Avolve.
- Software installed on any computer hardware/software configurations not supported by Avolve.
- Problems caused by misuse or misapplication of the Avolve SAAS Solution, including any anomalies and/or failures in test or production operating environments that impact the Avolve SAAS Solution and are determined to have their cause due to unwarranted Customer decisions, actions, system configuration/ modification, policies and/or procedures.
- Problems caused by Customer’s custom application code authorized to be developed using Avolve APIs as set forth in the documentation accompanying such API and the Customer’s Agreement.
- Problems caused by updates or upgrades of 3rd party applications that are integrated with Avolve products and/or services.

- Services required to implement any updates, upgrades or releases on Customer’s network, as well as all other operational support issues, are not included with Avolve Support. Such additional services may be purchased for an additional fee.
- All Training programs, regardless of software version updates and/or upgrades.
- Operational Support including but not limited to: (a) Windows configuration issues; (b) SQL Database maintenance and or tuning; (c) VMWare tuning or configuration; (d) Firewall configuration; (e) Network performance; (f) End-User browser support; (g) User-modified and new workflows or eForms.
- Any other reasons set forth in the Customer’s Agreement, including without limitation any down-time due to Microsoft Corporation.

Avolve, in its sole discretion, shall determine whether any of the foregoing exclusions are applicable to Customer. Any services provided for exclusions shall be paid by Customer at Avolve’s then-current rates, as well as all travel and other expenses incurred by Avolve in providing such services.

Customer’s Obligations for Operational Support. To facilitate clear and consistent communication and timely issue resolution, Customer shall designate up to two contact persons for technical support processes. These individuals are responsible for initiating support requests, communicating with Avolve technical support personnel, and monitoring the support process with Avolve. Timely Customer response to Avolve requests for information during issue resolution is a necessary prerequisite to Avolve’s providing Support. Avolve also requires remote access to the Customer system for the purpose of problem determination and analysis. Where reasonably necessary to provide Support, Customer shall provide Avolve’s technical support personnel reasonable, remote access capabilities into Customer’s systems. Upon Avolve’s request, Customer will also provide reasonable supporting data to aid in the identification and resolution of the issue.

Service Level Commitment

Avolve will use commercially reasonable efforts to make the Avolve SAAS Solution Available with an Annual Uptime Percentage of at least 99.99%, excluding Planned Downtime. In the event that Avolve does not meet this uptime commitment, Customer will be eligible to receive a service credit for 1% of the monthly fee for each one (1) hour of downtime during Customer’s normal business hours, up to 50% of Customer’s Pro-Rated Monthly Subscription Fee.

Definitions

- “Annual Uptime Percentage” is calculated by subtracting from 100% the percentage of 10-minute periods during a calendar month in which the Avolve SAAS Solutions was Unavailable to Customer.
- “Availability” means the ability to log into the Avolve SAAS Solution.
- “Claim” means a claim for a service credit Customer submits by opening a support case with Avolve, on the basis that the hosted Avolve SaaS Product infrastructure has been Unavailable to Customer during a service month.
- “Pro-Rated Monthly Subscription Fee” is calculated by dividing the Customer’s applicable annual Avolve SAAS Solution subscription fee by twelve.
- “Unavailability” means the inability to log into the Avolve SAAS Solution.

Service Credit Requests

To receive a service credit, Customer must notify Avolve and submit a Claim within thirty (30) days from the incident that would be the basis for the claim. To be eligible, the Claim must include (a) the dates, times, description and duration of each incident experienced; and (b) the Customer’s event logs or any other system telemetry that document the errors and corroborate the claimed Unavailability (any confidential or sensitive information should be removed). Failure to provide a timely Claim, which includes all the required information, will disqualify the Claim and Customer from receiving a service credit. If Avolve validates the Claim, then Avolve will promptly issue the service credit.

Service Credit Provisions

Service credits are Customer’s sole and exclusive remedy for any failure of Avolve to provide the Avolve SAAS Solution in accordance with the terms of the Agreement. Service credits shall be a credit toward future services only and do not entitle Customer to any refund or other payment from Avolve. Service credits may not be transferred, applied to another account, exchanged for, or converted to monetary amounts.

The maximum service credits awarded with respect to Claims the Customer submits in any calendar month shall not, under any circumstance, exceed in the aggregate 50% of the Customer's Pro-Rated Monthly Subscription Fee for such month. Avolve will use all information reasonably available to it to validate Claims and make a good faith judgment on whether a service credit should be applied to the Claim.

SLA Exclusions

This SLA does not apply to any Availability or Unavailability of the Avolve SAAS Solution:

- During Planned Downtime;
- Caused by Unsupported Issues;
- Caused by factors outside of Avolve's control, including any force majeure event or interruption or impediment to Internet access or related problems;
- That result from Customer's equipment, software or other technology and/or third party equipment, software or other technology, including any third party hosting providers;
- That resulted from Planned Maintenance or associated to beta, evaluation, non-production systems, and trial services accounts;
- That result from any actions or inactions from Customer or any third party, including employees, Users, agents, contractors, or vendors, or anyone gaining access to the hosted Avolve SaaS Product infrastructure by means of Customer's (and its Users') passwords or equipment;
- Arising from Avolve's suspension and termination of Customer's right to use the hosted infrastructure in accordance with the Agreement; and
- That result from Avolve application software implementation errors caused by configuration, customization, installation, or human errors.
- Avolve, in its sole discretion, shall determine whether any of the foregoing exclusions are applicable to Customer. Avolve may, but is not obligated to, issue a Service Credit in Avolve's sole discretion where Customer's use of the Avolve SAAS Solution may be Unavailable due to factors other than expressly provided here in this SLA.

EXHIBIT 2 – Form of Implementation SOW



Electronic Document Management & Collaboration Solution
Implementation SOW for Avolve SAAS Solution

**Customer of Yours, State
("Customer")
Proposed Statement of Work
DATE**

[Insert Customer Logo]



4835 East Cactus Road Suite 420, Scottsdale, Arizona 85252
Phone: 602.714.9774 www.avolvesoftware.com

EXECUTIVE SUMMARY AND KEY LICENSE TERMS

This Implementation SOW is for the INSERT PRODUCT NAME ("Avolve SAAS Solution") and documents the implementation of **the Avolve SAAS Solution** in a standardized, off the shelf manner (the "Project"). This Implementation SOW is entered into pursuant to the terms of the Software as a Services Agreement to which it is attached as Exhibit A. Capitalized terms not defined otherwise herein shall have the meaning given to them in the Agreement.

Avolve SAAS Solution: **INSERT NAME PRODUCT**

Authorized Business Units: **INSERT UNITS AUTHORIZED**

License Types (if applicable): **INSERT**

Initial Subscription Term: **INSERT**

Included Storage: **INSERT**

HIGH LEVEL SCOPE OF WORK (MILESTONES)

- Installation (Offsite/Remote)
 - Provisioning of all applicable products and modules as specified on the Sales Order, attached hereto as Exhibit B.
- Orientation and Configuration Requirements Session* (2 Staff/Onsite/3-4 Days)
 - ProjectDox Configuration Requirements Document
 - Permitting system integration touchpoint discussion
 - Project Plan (task list/schedule/resource assignments)
- Configuration & Integration (Offsite/Remote)
 - Configured Working ProjectDox Application
 - Configured Working products and modules as specified in the Sales Order
- Training (1 Staff/Onsite/3-5 days)
 - Delivery of classes for all products/modules as purchased – See Sales Order **<or list training courses purchased below>**
- User Acceptance Training (UAT) (Offsite/Onsite)
(the date Customer accepts this milestone is the Software Acceptance Date)
 - Completion of User Acceptance Testing (UAT)
- Launch (1 Staff/Onsite/2-3 Days)

ACCEPTANCE PROCESS

There will be Key Deliverables, as identified below in the list of Project Key Deliverables section of this SOW below, which will be subject to acceptance by the Customer (“Acceptance”). Upon completion of each Key Deliverable, Customer will have five (5) business days after receipt thereof to provide a written rejection notice, which notice shall include in reasonable detail the basis for the rejection. Notwithstanding the foregoing or anything to the contrary in the Purchase Agreement, all other Deliverables provided under this Statement of Work shall be deemed to have been accepted by the Customer upon delivery. If Customer does not approve, reasons for rejection must be clearly noted. Avolve will then work with the Customer to come to agreement on obtaining approval. The Customer shall be deemed to accept any such Key Deliverable which Customer does not accept or reject within such period. This acceptance will initiate the invoice of the applicable milestone.

PROJECT KEY DELIVERABLES

1. **Configuration Requirements Document (CRD)* including applicable products/modules**
 - Configuration / Modification Session Output
2. **ProjectDox Application Configuration <Update as necessary listing the environments to be installed>**
3. **Configured, Working ProjectDox Application and applicable products/modules from sales order**
 - Configuration / Modification Effort Output
4. **Launch**
 - Transition to Support
 - Project Completion

For the avoidance of any doubt, all right, title and interest in and to the Deliverables (including without limitation the above Key Deliverables), as well as the intellectual property rights to such Deliverables, shall belong to Avolve, subject to the limited license granted to the Customer pursuant to the Licensing Agreement.

AVOLVE PROJECT PLAN AND PROCESS

Promptly following execution of this Statement of Work, the parties shall meet to discuss the general project schedule, which will be generally organized around the standard Avolve project On-Boarding process. Within 2 weeks, the initial project plan will be created and sent to Customer. The Project Plan contains a schedule, a list of tasks in a schedule format, assignments of specific team members over specific times and communication status reporting processes. The Project Plan is a living document that will be reviewed throughout the term of this Agreement and may be adjusted as reasonably necessary, as agreed to from time to time by the parties.

PROJECT ASSUMPTIONS AND CAVEATS

1. This Project was scoped based upon purchase of ProjectDox Best In Class, understanding that the site will be hosted by the Avolve and configured per established Best-In-Class standards. This understanding forms the basis for Avolve's pricing and the Deliverables to be provided under this Statement of Work. Any deviation from these requirements will require a change order and may increase cost or estimated time of Project completion.
2. Avolve will have full access to all Project team members from the customer as needed to complete the successful implementation and roll out of ProjectDox. This access may require the team members of the customer to dedicate specific time to specific detailed tasks within the Project Plan. Team member tasks will be more clearly defined during the kickoff and planning sessions and key tasks will be documented in the Project Plan.
3. Should the customer cause or contribute to the delay of any Deliverable, Avolve may elect to revise the Project Plan accordingly to compensate for the delay.
4. All parties will reasonably prioritize their efforts to meet the Project Plan schedule in order to achieve a rapid roll out model. In doing so, it is understood by all parties that multiple tasks may be in process at one time and Avolve may have more than one Professional Services team member working on the project at one time.
5. Client will provide adequate Project management for their own resources, and/or third parties, to collaborate with Avolve's project manager. Client subject matter experts and applicable users will be accessible and available in a timely fashion and for adequate and reasonable durations. Avolve will make sure that scheduling of interviews and meetings are adequately in advance of these resource allocations.
6. Any optional items chosen in the Sales Order are not included here and would require a modification to this Statement of Work.

**Configuration options are as described by ProjectDox documentation and as evidenced by ProjectDox administration screens. Minor changes to Avolve ProjectDox Best Practices (Best in Class) workflows are changes to activate/deactivate and/or parametrize with variables, existing steps in the Best Practices workflows. Customization of additional products and modules are to be within the bounds and scope of the respective core product(s) and modifications are limited to those that are allowed by core product design.*

CHANGE CONTROL PROCESS

The "Change Control Process" is that process which shall govern changes to the scope of the Project during the life of the Project. The Change Control Process will apply to new components and to enhancements of existing components. The Change Control Process will commence at the start of the Project and will continue throughout the Project's duration. Additional procedures and responsibilities may be outlined by the Project Manager identified on the signature page to the Agreement and will be included in the Project Plan if mutually accepted.

Under the Change Control Process, a written "Change Request" (attached) will be the vehicle for communicating any desired changes to the Project. It will describe the proposed change; the reason for the change and the effect the change may have on the Project. The Project Manager of the requesting party will submit a written Change Request to the Project Manager for the other parties.

All parties must sign the approval portion of the Change Request to authorize the implementation of any change that affects the Project's scope, schedule or price. Furthermore, any such changes that affect the scope of this SOW, schedule or price will require an amendment to the SOW and/or any other part of the Purchase Agreement.

PRICING

<Update as necessary> Pricing and payment terms are as set forth in Sales Order.

STATEMENT OF WORK ACCEPTANCE

Once fully executed, this document will become the Implementation SOW for the Project defined in this document. Avolve and Customer’s signatures below authorizes Avolve to begin the services described above and indicates Customer’s agreement to pay the invoices associated with these services delivered as described.

PAYMENT TERMS

Avolve will invoice Customer for Avolve SAAS Solution subscription fees and other professional services in accordance with the Agreement.

Customer		Avolve Software Corporation	
Name		Name	
Title		Title	
Signature		Signature	
Date		Date	



GENERAL INFORMATION				
Change Request # (CR)				
Project/City/County				
Requestor Name				
Description of Change	<i>[Enter a detailed description of the change being requested]</i>			
Date Submitted				
Priority	<input type="checkbox"/> Low	<input type="checkbox"/> Medium	<input type="checkbox"/> High	<input type="checkbox"/> Required
Reason for Change Request	<i>[Enter a detailed description of why the change is being requested]</i>			
Project Artifacts Impacted	<i>[List other artifacts affected by this change]</i>			
Assumptions/Risks	<i>[Document assumptions or comments regarding the requested change]</i>			
Comments/Considerations	<i>[Enter additional comments]</i>			
Attachments/References				

ESTIMATES		
Total Estimated Development Hours	<i>[#hrs]</i>	<i>[Enter the hour impact of the requested change]</i>
Total Estimated Development Duration	<i>[#dys]</i>	<i>[Enter the duration impact of the requested change]</i>
Schedule Impact	<i>[WBS]</i>	<i>[Detail the impact this change may have on schedules]</i>
Cost Impact	<i>[Cost]</i>	<i>[Detail the impact this change may have on cost]</i>
Comments/Recommendations		
PM Approval Signature		
Date Signed		
IDS Approval Signature		
Date Signed		

CITY OF SOMEWHERE AUTHORIZATION	
Customer Approval Signature	
Date Signed	

To be provided separately

EXHIBIT C
City of Austin, Texas
NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas
Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

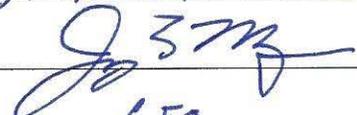
Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 7th day of February, 2019

CONTRACTOR
Authorized
Signature

Avolve Software Corporation


LFO

Title

EXHIBIT D
City of Austin, Texas
Section 0805
NON-SUSPENSION OR DEBARMENT CERTIFICATION

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name:

Avaline Safferman Corporation

Signature of Officer or
Authorized
Representative:

J. S. Mayne

Date:

2/7/2019

Printed Name:

Jay Mayne

Title

CEO



City of Austin Purchasing Office
Sole Source
Certificate of Exemption

DATE: Nov 7, 2018

DEPT: CTM

TO: Purchasing Officer or Designee

FROM: Stephen Elkins

PURCHASING POC: Daniel Dellemonache

PHONE: 512-974-2981

Chapter 252 of the Local Government Code requires that municipalities comply with certain competitive solicitation procedures before entering into a contract requiring an expenditure greater than \$50,000, unless the expenditure falls within an exemption listed in Section 252.022 or other applicable law.

Refer to Local Government Code 252.022 for a complete list of exemptions:

[Link to Local Government Code](#)

This Certificate of Exemption must be complete, fully executed, and filed with the City Purchasing Office.

The City has deemed this procurement to be exempt from the competitive solicitation requirements of LGC Chapter 252 based on the following facts:

1. The undersigned is authorized and certifies that the following exemption is applicable to this procurement. Please check the criteria listed below that applies to this sole source request:

- Items that are available from only one source because of patents, copyrights, secret process, or natural monopolies.
- Films, manuscripts or books that are available from only one source.
- Gas, water and other utilities that are available from only one source.
- Captive replacement parts or components for equipment that are only available from one source.
- Books, papers and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials.
- Management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits.

2. Describe this procurement including the following information as applicable:

- What it is for and why it is needed?

For the continued use and expansion of ProjectDox as an electronic markup and document management tool which has already been competitively bid and awarded to Avolve through the Request for Proposal (RFP) process. ProjectDox has been implemented and is in Production use for the submittal, review and markup of electronic building and site plans.

- What is the municipal purpose that this procurement addresses or furthers?

For the continued use and expansion of ProjectDox as an electronic markup and document management tool which has already been competitively bid and awarded to Avolve through the Request for Proposal (RFP) process. ProjectDox has been implemented and is in Production use for the submittal, review and markup of electronic building and site plans. There are current projects underway to modify and expand the use of the tool with Development Services and Public Works departments.

- Why is the procurement a sole source?

The software is solely built and distributed direct by Avolve Software. The vendor is the sole provider of implementation services, maintenance and support.

- Has this procurement or a similar procurement been competitively solicited in the past?

Yes, RFP 5600 SMW0120.

- Why is the vendor the only viable solution?

Replacing the existing installation would be at a significant effort and cost to the City. Replacement would include another RFP process, vendor selection, technical staff training, implementation services, complete redesign and build of system integrations and end user training at a minimum. This would be extremely costly and disruptive to existing operations.

- Are there any other alternative solutions? If so, why are those alternatives unacceptable?

Replacing the existing installation would be at a significant effort and cost to the City. Replacement would include another RFP process, vendor selection, technical staff training, implementation services, and end user training at a minimum. This would be extremely costly and disruptive to existing operations.

- Is there a concern regarding warranty, compatibility, and/or routine safety? No
- Are there territorial or geographic restrictions for the product distribution and sale? No
- Are there other resellers, distributors, or dealers in the market? No
- What other suppliers or products/services were considered? RFP 5600 SMW0210 was previously conducted and other solutions were evaluated at that time.
- If the product is designed to be compatible with existing equipment/item/system, describe the age, value and useful life remaining of the current equipment/item/system. What is the estimated cost of buying new equipment/item/system? What is value of buying the addition versus buying all new?
- Is there a way to retrofit another brand? What is this estimated associated cost?
No, Avolve does not outsource the maintenance and support of their software to third party vendors.
- What specialized training or certifications are necessary to maintain or repair the equipment/item/system? Is it specific to the proposed vendor?

Avolve does not outsource the maintenance and support of their software to third party vendors. Any attempts by a third party to provide maintenance/support on this software solution could void warranties, and cause damage that Avolve will not correct under the contract.

- **Prices were determined to be reasonable based on the following (select all that apply):**
 - Prices are the same or similar to current City contract GA14000105.**
Notes: At a minimum, note the City of Austin contract number and title.
 - Prices are the same or similar to current contract with another government.**
Notes: At a minimum, note the contract number, title and government that created the contract.
 - Prices are on a current and publicly available list price, for the same or similar products, available to all government and commercial customers.**
Notes: At a minimum, note the list price title, source of the list price (catalog and catalog publish date or web address and download date).
 - Prices are established by law or regulation.**
Notes: At a minimum, note the legal or regulatory reference that established the prices.
 - Other means of determining Price Reasonableness.**
Notes: Describe any other source that was used to establish Price Reasonableness.

* The questions in the form are designed to justify why this purchase should be exempt from a competitive procurement process. Failure to provide adequate documentation to substantiate the request may lead to the request being rejected.

This contract was previously solicited as RFP solicitation number RFP 5600 SMW0120 on March 11th 2014. Four vendors responded to that solicitation and after conducting an evaluation of those responses a contract was awarded to Avolve Software Corporation. That contract MA 5600 GA14000105 is expiring and this request is for its replacement. Avolve's software solution is now a permanent component of the City's IT infrastructure. Replacing the Avolve software solution at this point would require a lot of resources from City staff to remove it from the City's IT structure, and at additional cost that could exceed the amount paid for a potential new solution. Replacing the Avolve software solution could potentially cause service disruptions around the City. Avolve Software Corporation is also the only company who can maintain their solution. They do not outsource support/maintenance to other vendors. Since this solution was competitively bid in the past it is recommended that the City continue with this current solution by executing a new sole source master agreement with Avolve Software Corporation.

3. Forward the completed and signed Certificate of Exemption to the Purchasing Office along with the following documentation:

- Scope of Work or Statement of Work or Vendor Proposal
- Vendor's Quote
- Project timeline with associated tasks, schedule of deliverables or milestones, and proposed payment schedule
- Vendor's or Manufacturer's (if vendor is a sole authorized distributor) sole source letter: less than 6 months old, signed by an authorized representative, and on company letterhead, should clearly state they are the sole provider and explain why

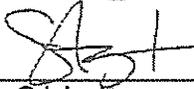
4. Based on the above facts and supporting documentation, the City of Austin has deemed this procurement to be exempt from competitive procurement requirements pursuant to Texas Local Government Code section 252.022(7) and will contract with:

(Vendor Name): Avolve Software for

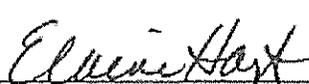
(Description of Procurement): The contract would include software licenses, maintenance, training, professional services, and optional hosting services for software for electronic plan review. The five year estimate is \$2,995,884.78.

5. Check the contract type (one-time or multi-term) and fill in the dollar amount and term as applicable:

- This is a one-time request for \$ _____
- This is a multi-term contract request for 24 (# months for base term) in the amount of \$ 1,440,823.12 with 3 (# of renewal options) for \$ 518,354.05 each for a total contract amount of \$ 2,995,884.78.

Recommended Certification  11/13/18
Originator Date

Approved Certification  11/14/2018
Department Director or designee Date

 11/14/2018
Assistant City Manager / General Manager Date
(procurements requiring Council approval)

Purchasing Office Review  _____
Authorized Purchasing Office Staff Date

Purchasing Office Management Review  _____
Purchasing Officer or designee Date
(procurements requiring Council approval)



September 20, 2018

Stacey Wuest
Contract Specialist
City of Austin Texas

In Reference: Sole Source of Avolve Software and Services

Dear Ms. Wuest:

This letter is to verify the following facts of our Avolve software suite of products.

- OAS, ProjectDox and PlansAnywhere are solely built and distributed direct by Avolve Software.
- Avolve Software is currently the sole provider of implementation services, maintenance and support services for all Avolve products.

Please contact us if you need anything further or have any other questions.

All the Best

A handwritten signature in black ink, appearing to read "Paul Neel", written over a faint, light-colored rectangular stamp or watermark.

Paul Neel
VP Sales
Avolve Software
4835 E. Cactus Rd. Suite 420,
Scottsdale, AZ 85254